

ORIGINAL

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DISTRICT COURT OF GUAM

DEC 23 2004 9P

MARY L.M. MORAN
CLERK OF COURT

(1)

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7

8 IN THE UNITED STATES DISTRICT COURT
9
10 DISTRICT OF GUAM

11 FRANCISCO QUITUGUA,) CIVIL CASE NO. 04-00040
12 Plaintiff,)
13 vs.) UNITED STATES ANSWER
14 UNITED STATES OF AMERICA,)
15 Defendant.)

17 Federal Defendant United States of America, by and through its counsel,
18 Leonardo M. Rapadas, United States Attorney for the Districts of Guam and NMI,
19 and Mikal W. Schwab, Assistant United States Attorney for said District, answers
20 Plaintiffs' Complaint in like numbered paragraphs as follows:

- 21 1. This Paragraph sets forth jurisdictional allegations to which no
22 response is required. To the extent this paragraph is deemed to
23 contain allegations of material fact, they are DENIED.
24
25 2. Defendant admits it was involved in a low speed rear end accident
26 with plaintiff on July 2, 2003, within the judicial district of Guam.
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1 Except as expressly admitted, the remaining allegations are
2 **DENIED.**
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3. Defendant admits it received an administrative claim from plaintiff on September 10, 2003 in the amount of \$9,007.82 and that more than six months have passed since the Postal Service's receipt of plaintiff's claim. Except as expressly admitted, the remaining allegations are **DENIED.**
 4. Defendant is without sufficient information to admit or deny the allegations of this paragraph. Said allegations are therefore **DENIED.**
 5. Defendant is without sufficient information to admit or deny the allegations of this paragraph. Said allegations are therefore **DENIED.**
 6. Defendant is without sufficient information to admit or deny the allegations of this paragraph. Said allegations are therefore **DENIED.**
 7. Defendant re-alleges its responses to paragraphs 1-6 of plaintiff's complaint herein.
 8. The Postal Service admits that at approximately 1300 hours on July 2, 2003, David K. Erwin was a postal employee driving a postal-owned vehicle. Except as expressly admitted, the remaining allegations are **DENIED.**

1 9. **DENY.**

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3 10. Defendant is without sufficient information to admit or deny the
4 allegations of this paragraph. Said allegations are therefore
5 **DENIED**

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7 11. Defendant is without sufficient information to admit or deny the
8 allegations of this paragraph. Said allegations are therefore
9 **DENIED**

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11 12. Defendant is without sufficient information to admit or deny the
12 allegations of this paragraph. Said allegations are therefore
13 **DENIED.**

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15 13. Defendant is without sufficient information to admit or deny the
16 allegations of this paragraph. Said allegations are therefore
17 **DENIED.**

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19 The paragraph beginning with "WHEREFORE" sets forth Plaintiff's prayer
20 for relief to which no response is required. To the extent this paragraph is
21 deemed to contain allegations of material fact, they are **DENIED.**

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23 All allegations not specifically responded to above are **DENIED.**
24 AND FURTHER answering, Defendant avers:

1 **AFFIRMATIVE DEFENSES**

3 **FIRST AFFIRMATIVE DEFENSE**

4 Pursuant to 28 U.S.C. § 2675, Plaintiffs are prohibited from claiming or
5 recovering an amount against the United States in excess of that which was
6 set forth in a claim presented to the United States Postal Service.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any
10 amount for prejudgment interest against the United States of America.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Under 28 U.S.C. §2412(d)(1)(A), Plaintiff cannot recover attorney's fees
14 from the United States of America.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 Defendant reserves the right to amend its Answer with additional defenses
18 of which it may become aware as discovery progresses and to raise any
19 other matter constituting an avoidance or affirmative defense.

21 **WHEREFORE**, having fully answered all counts of the Complaint,

22 Defendant prays that Plaintiff takes nothing by way of his Complaint against it,

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that the same be dismissed, and that judgment be awarded in favor of Defendant, together with costs and such other and further relief as the Court deems appropriate in this case.

Respectfully submitted,

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

MIKEL W. SCHWAB
Assistant United States Attorney

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CERTIFICATE OF SERVICE

I, FRANCES B. LEON GUERRERO, Legal Assistant, working in the U.S. Attorney's Office, in the District of Guam, hereby certify that a copy of the "United States Answer", in Civil Case No. 04-00040, Francisco Quitugua v. United States of America, was served by personal service to the following attorney of record:

Mark William, Esq.
Law Offices of Mark E. Williams, P.C.
Suite 201, Iris Building
315 S. Marine Corps Drive
Tamuning, Guam 96913

Dated: December 23, 2004

Frances B. Leon-Guerrero
FRANCES B. LEON-GUERRERO
Legal Assistant